

REMARKS

Applicant thanks the Examiner for a thorough search of the present application, but respectfully requests reconsideration of the present application in view of the reasons that follow. Claims 1-21 are currently pending in this application.

In the outstanding Office Action of April 7, 2008, the Examiner maintained the rejection of claim 18 under 35 U.S.C. § 101 because, in the Examiner's opinion, claim 18 is still directed to non-statutory subject matter. Applicant respectfully disagrees with the Examiner's position. In the Office Action of October 5, 2007, the Examiner stated:

Claim 18 recited "A computer program product comprising:
computer code" which is non-statutory as not being tangibly
embodied in a storage medium and in manner so as to be
executable by a computer/processor

In response to this rejection, Applicant amended claim 18 to recite "a computer program product embodied on a computer-readable medium." (*See*, January 7, 2008 Amendment and Reply). In addition, Applicant submitted that such an amendment was in accordance with the Examiner's recommendation inasmuch as the computer program product was now "tangibly embodied in a storage medium and in a manner so as to be executable by a computer/processor." In addition, Applicant drew the Examiner's attention to portions of the disclosure that provided support for the amendment. In particular, Applicant submitted that an example of such a computer-readable medium is illustrated in Figure 4 and described in paragraph [0026] as the memory of the device.

In the current rejection under 35 U.S.C. § 101, the Examiner stated:

Claim 18 recited "A computer program product comprising:
computer code" which is non-statutory as not being
executable in/by a computer/processor.

Applicant notices that the language pertaining to "not being tangibly embodied in a storage medium" has been removed from the rejection. As such, the Examiner correctly

recognized that the computer program product of the amended claim is properly embodied in a storage medium. However, surprisingly, the Examiner asserted that the claim is still directed to non-statutory subject matter “as not being executable in/by a computer/processor.” Accordingly, the Examiner is essentially asserting that the claimed program product is properly embodied on a medium, but is not executable. Applicant respectfully disagrees and submits that one of ordinary skill in the art would readily understand that a computer program product that is embodied on a storage medium is clearly “executable” by a processor. If such were not true, every computer program product stored in a memory would have no value and never be able to provide the program’s intended purpose.

Furthermore, Applicant respectfully submits that the disclosure clearly provides a basis for one ordinary skill in the art to understand that the computer program product of the present application is executable by a processor. For example, Figure 4 of the disclosure clearly depicts that the device includes a CPU coupled to a memory. One of ordinary skill in the art would understand that such a configuration enables the CPU to execute program products embodied on the memory. As such, Applicant submits that the Examiner’s assertion that the claim is directed to non-statutory subject matter is improper and therefore should be withdrawn.

Additionally, the Federal Circuit described a computer program that meets the requirements of 35 U.S.C. § 101 for statutory subject matter, indicating that:

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory.

In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Since a computer program product embodied on a computer-readable medium meets the above standard, Applicant submits that the present claim language is statutory. As such, Applicant respectfully requests withdrawal of the rejection of claim 18.

In light of the Examiner's consideration of Applicant's arguments filed on January 7, 2008, new grounds of rejection have been asserted. In particular, claims 1-21 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,188,160 to Champagne et al. (Champagne). Applicant respectfully traverses the rejection for the reasons set forth below.

With regard to independent claims 1, 7, 14, and 18, the Examiner asserted that Champagne expressly or inherently teaches all of the required elements of these claims. Applicant respectfully disagrees with the Examiner's position. In particular, and as discussed in greater detail below, Applicant submits that Champagne fails to teach or suggest a plurality of features associated with each of independent claims 1, 7, 14, and 18.

Champagne teaches a method and apparatus for synchronizing a device and a network management system. (*See, e.g.*, abstract, col. 1, lines 61-65, col. 2, lines 38-47, col. 4, lines 56-64, and col. 6, lines 7-10). The device includes two interfaces. (*See, e.g.*, 18 and 20 in figure 1). The first interface (18) is connected to the network. (*See, e.g.*, col. 3, lines 46-52). The second interface (20) enables direct access to the device and thereby bypasses the network. (*See, e.g.*, col. 3, lines 46-52). Since the second interface bypasses the network, the network server may become unsynchronized if the device receives information via the second interface. (*See, e.g.*, Col. 4, lines 56-63). To solve this problem, Champagne teaches that the device is configured to provide current configuration information (of the device) to the network. Accordingly, the network is periodically synchronized with the current configuration of the device. (*See, e.g.*, abstract, col. 1, lines 61-65, col. 2, lines 38-47, col. 4, lines 56-64, and col. 6, lines 7-10). As further discussed, this information may be sent based on user initiation or based on a periodic request sent from the network. (*See, e.g.*, col. 5, lines 10-18).

In stark contrast, claim 1 recites "receiving a provisioning content document from a wireless communication network." Claim 7 recites "a receiver configured to receive information from a communication network." Claim 14 recites "the client device having a configuration based on a provisioning content document received from the server computer." Claim 18 recites "parse configuration information received from a communication network." Accordingly, each

claim requires configuration information to be *received from the network*. Since Champagne teaches the complete opposite (*i.e.*, information *received from the device*), Applicant submits that Champagne fails to expressly or inherently read on the direction of the routing expressly required by each independent claim. For at least this reason, Applicant submits that the anticipation rejection is improper and therefore should be withdrawn.

Furthermore, Applicant submits that it would be improper to combine another teaching with Champagne in an attempt to cure the opposite direction of routing taught by Champagne. This is because the entire purpose of Champagne's invention is to correct synchronization associated with the server. Since the device does not have synchronization problems, there would be no reason to send configuration data from the server to the device in an attempt to synchronize the two devices. In other words, there is no rationale basis for sending synchronization data to a device that is already synchronized. Such an operation would be a waste of computing and networking resources.

In addition to Champagne's deficiency with regard to the direction of the routing, Applicant submits that Champagne teaches a completely different method once information is received at a node. Champagne discusses that, in response to a synchronization request, the device sends the network "an UPLOAD response 40 including a file containing the device's running configuration." (Col. 5, lines 39-41). "Upon receiving the uploaded configuration file included in the UPLOAD response 40 from the device 12, the server 16 updates the corresponding information in the network management database. (Col. 6, lines 1-4). "Upon completion of this updating, the NMS database becomes synchronized with the configuration information in the network device." (Col. 6, lines 8-10). Accordingly, Champagne *generally* teaches that updating a server comprises the steps of receiving a configuration file and updating a server.

In contrast, each of independent claims 1, 7, 14, and 18 recite a *detailed* configuration method that cannot properly be considered to be the same or even relate to the above discussed synchronization method of Champagne. For example, claim 1 recites "[a] method for client

provisioning ... comprising: ... parsing the provisioning content document including a plurality of characteristics” and “identifying a flag parameter in an application characteristic of the plurality of characteristics in the provisioning content document, wherein the flag parameter indicates whether parameters should be set in the configuration of the device.” Applicant respectfully submits that Champagne fails to expressly or inherently teach “parsing” or any other separating type operation. Furthermore, Applicant respectfully submits Champagne fails to teach anything relating to identifying “flags” within a “provisioning content document.” In fact, Applicant has carefully reviewed the entire disclosure of Champagne and submits that the terms parsing and flag are not even mentioned once in the disclosure. Furthermore, since Champagne fails to teach a flag, it necessarily follows that Champagne cannot teach a flag parameter that “indicates whether a parameter should be set in the configuration of the device.” As such, Applicant submits that Champagne fails to teach or suggest numerous features recited in independent claim 1.

With respect to independent claims 7 and 18, Applicant submits that the rejection of each these claims is improper for reasons similar to those discussed above with regard to claim 1. For example, claim 7 recites “a parser configured to parse the configuration information and identify a flag parameter in the configuration information, wherein the flag parameter indicates whether certain parameters should be set in the configuration of the device.” Claim 18 recites: “parse configuration information received from a communication network” and “identify a flag parameter in the configuration information, wherein the flag parameter indicates whether certain parameters should be set in the configuration of the device” and “set the certain parameters if the flag parameter so indicates.” As discussed above, Champagne fails to teach both parsing and identifying a flag. Furthermore, Champagne fails to teach a flag that “indicates whether certain parameters should be set in the configuration of the device.” Accordingly, Applicant respectfully submits that the rejection of claims 7 and 18 is also improper and, therefore, should be withdrawn.

With respect to independent claim 14, Applicant submits that this rejection is improper for at least failing to teach or suggest a “provisioning content document including a flag parameter, wherein the flag parameter indicates whether certain parameters should be set in the

configuration of the device.” As discussed above, Champagne fails to teach or suggest a “provisioning content document” that includes a “flag.” Moreover, Champagne fails to teach or suggest a flag parameter that indicates whether certain parameters should be set. In fact, Applicant submits that Champagne is void of any discussion of setting parameters based on information received. For at least the above reasons, Applicant submits that the rejection of claim 18 fails to meet the standard for an anticipation rejection.

With regard to the rejection of claims 2-4, Applicant submits that the rejection is improper because Champagne fails to discuss anything related to a flag parameter in an “application characteristic.” Therefore, it would be impossible for Champagne to teach or suggest that the “application characteristic comprises multiple levels,” as recited in claim 2. Additionally, it would be impossible for Champagne to teach that the flag parameter is located in only one level or in a plurality of levels, as discussed in claims 3 and 4 respectively.

With regard to claim 5, Applicant submits that Champagne fails to teach or suggest that “the flag parameter has a meaning defined in a registration document.” As discussed above, Champagne fails to teach or suggest a flag. As such, Applicant does not understand how Champagne could inherently or expressly teach the location of the flag definition. The Examiner broadly asserted that such a teaching was described in “columns 6-8,” however, Applicant has carefully review the cited section and cannot find any teaching of a flag definition location or even the discussion of a flag.

Because the reference cited by the Examiner fails to teach all of the required features of independent claims 1, 7, 14, and 18, Applicant submits that each of these independent claims are allowable over the cited reference. Furthermore, because dependent claims 2-6, 8-13, 15-17, and 19-21 are each directly or indirectly dependent upon independent claims 1, 7, 14, and 18, Applicant submits that each of these claims are allowable over the cited reference for at least the same reasons as discussed above in addition to those reasons discussed with respect to claims 2-

5

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: July 7, 2008

By /G. Peter Albert, Jr./

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6735
Facsimile: (858) 792-6773

G. Peter Albert Jr.
Attorney for Applicant
Registration No. 37,268